



City of Tigard
Tigard Special Meeting – Minutes

Agenda Item No. 3.A.1.

Meeting of March 22, 2011

TIGARD CITY COUNCIL

MEETING DATE AND TIME: February 1, 2011 - 6:30 p.m.

MEETING LOCATION: City of Tigard - Town Hall - 13125 SW Hall Blvd., Tigard,
OR 97223



A. Mayor Dirksen called the meeting to order at 6:38 p.m.

B. Roll Call

<u>Name</u>	<u>Present</u>	<u>Absent</u>
Mayor Dirksen	✓	
Councilor President Buehner	✓	
Councilor Henderson	✓	
Councilor Wilson	✓	
Councilor Woodard	✓	

CONDUCT INTERVIEWS FOR CITY ATTORNEY SERVICES



City Manager Prosser reviewed the procedures set up for the selection of the firm to provide City Attorney services for the City of Tigard. Interviews will be conducted this evening followed by Executive Session to be called under ORS 192.660(2)(a) (see below).

- RFP was published by the City of Tigard with proposals due January 11, 2011. Selection criteria was listed in the RFP and City Manager Prosser reviewed these with the City Council.
- Candidates were asked to prepare a 15-minute presentation, and submit a writing sample.



- **Interview Representatives of Jordan, Schrader, Ramis PC**

Attorney Tim Ramis introduced representatives of the firm present

- Damien Hall
- Jeff Bennett
- Harlan Jones
- Angela Johnson tack

City Attorney Ramis facilitated the presentation on behalf of the Jordan, Schrader, Ramis firm. Key points are as follows:

- Described the ideal way he set out to organize legal representation for the City of Tigard when his firm was selected to represent the City.
 - Make legal services available to local government at the same level of expertise and professionalism that was available successful businesses.
 - Provide greater depth and breadth of representation than a municipality could receive through in-house counsel.
 - Provide service from senior lawyers at a price that reflected what would typically be the cost of an associate lawyer in the private sector.
- Expertise offered by the firm was presented. Reference was made to materials supplied to the Mayor, Council, and City Manager. A notebook is on file with the packet materials containing a handout, bar information, and a writing sample. He reviewed projects worked on by the firm. Areas of expertise include land use. Mr. Ramis has been listed for the past few years by the Best Lawyers in America Service for his expertise in land use. In the firm's practice, they are frequently called upon by other jurisdictions for consultation on the more difficult problems.
- The firm has two main functions for the City of Tigard:
 - Assist the staff in their administration of the City's growth management program. The goals are to be the best team members they can be, help staff achieve their purposes, and to look out for problems that come up. The City Attorney's office meets with staff on a weekly basis to answer staff questions and work on the agenda for the land use community development issues.
 - Assist the Council in making decisions. The firm's main function is to protect the record; that is, make sure that a record has been created that is defensible when the City Council makes its decision. This has been successful in terms of preventing litigation. There have been few legal challenges to land use decisions because the firm has been aggressive in protecting the Council's interest.
- With regard to local budget law, Mr. Ramis advised the City is well served by the City Manager and Finance Director who are well versed. He reported the firm seldom receives calls from the City of Tigard regarding local budget law. However, the firm is active for other cities and gives advice on supplemental


budgets, inter-fund transfers, loans, and local budget law ordinances. The firm recently set up all of the funds for the City of Damascus. The firm is called upon to give seminars to client cities and special districts regarding budget process.

- With regard to codification of ordinances, Mr. Ramis said this is work the firm regularly performs. Recently, they helped the state's two newest cities, Damascus and LaPine to design their codes and train them regarding codification. The key is to set up the division of labor between the City Attorney and staff for cost effectiveness.
- With regard to election law, Mr. Ramis said his firm gives advice and, if necessary, advocates for their clients before the Secretary of State's office or in the courtroom. The firm maintains excellent relationships with staff at the Secretary of State's office. The firm drafts and litigates ballot titles. He referred to an innovative ordinance written for the City of Tigard in that if someone chooses to challenge a ballot title, the challenge must come to the City Council first. Once a decision is reached by the City Council, the challenge can be carried to the Circuit Court but the challenge is contained to a narrow scope of review before the judge. In other jurisdictions, they can proceed directly to the Circuit Court and the judge can completely rewrite the ballot title. The firm has worked on many recall, initiative and referral matters. The firm has successfully defended elected officials from elections violation charges.



- With regard to public contracting, Mr. Ramis said his firm does all the work typically done by a City Attorney (drafting contracts, drafting rules of operation, performing a statutory review and update of rules, advising on bid protests). In addition to this typical work, his firm brings long experience with litigating those issues.
- With regard to annexation law, Mr. Ramis said this is an area of expertise. They have played a role in more than 100 annexations (all types) over the years. Mr. Ramis described examples of recent annexation work he has performed.



- With regard to public financing, Mr. Ramis said his firm is consistently called upon to perform a variety of assignments in this area. As the cost of infrastructure goes up and becomes a critical focus of local government and the amount of money goes down, what is tending to happen is that the financing infrastructure tends to be a partnership between governments or between government and the private sector. Having an understanding of how to put these partnerships together, document them and make them work is an acquired knowledge set in his firm. Mr. Ramis gave examples of financing agreements he has prepared.  Mr. Ramis explained that his firm's experience in the financing area is not limited to negotiating and drafting as they are also

experienced in using effective methods to accomplish their client cities' purposes. He gave the example of the System Development Charges that was put together for the City of Tigard, which was defended successfully in Circuit Court asserting that the City was authorized to do what they had done under the Home Rule Authority despite the absence of a statute. This approach had not been taken previously but it placed the City in an excellent position for bargaining with the Homebuilders Association with regard to what the statute would ultimately state.



- With regard to Open Meetings Laws, Mr. Ramis said his firm advises on these issues almost on a daily basis. He noted they often offer training on this subject, they keep track of law changes, and continue to keep abreast of the nuances of changes in the Attorney General's Manual. He referred to the transparency initiative proposed at the Legislature this session and that his office is monitoring proposals.
- With regard to state ethics matters, Mr. Ramis said his firm addresses these issues frequently. They encourage Council members to call them if they have questions. They regularly monitor the training offered by the Ethics Commission staff. His firm has successfully defended elections officials on ethics issues; although, he advised they give advice (interpreting conservatively) so City Council members can avoid complaints against them.

The Mayor and Council asked questions of those members of the firm present:

- Council President Buehner asked if anyone on the firm represented a client by the name Brix (a conflict question). No one from the firm reported they represented this client.



- Councilor Wilson asked about City Attorney coverage on Tuesday evenings and how they determine who would attend the Council meeting if there were a conflict among their client jurisdictions. Mr. Ramis advised his firm's Municipal Department meets each Monday at which time they set the calendar to assure everything is covered. At this meeting, they also discuss substantive issues on cases. The rule is that, absent a major issue, Mr. Ramis attends Tigard City Council meetings, as the City of Tigard is his oldest, long-standing client. If he is not attending the Tigard City Council meeting, it is because he is out of town with his family or there is an emergency legal situation in another community.



- Councilor Wilson commented that the City Council is likely to hear from another firm that they, as a matter of principle, represent only public-sector clients. He asked for the philosophical leaning of the firm with regard to public- and private-sector

clients. Mr. Ramis directed the Council's attention to Page 3 of his handout for future reference. He said there are a couple of points he would like to make:


1. In the three decades he has done this type of work, the greatest source of conflicts does not come from private-sector representation, but from public-sector representation. Conflicts are more likely from other units of government, particularly, special districts. The private-sector conflicts are easier to avoid; it is more clear, shows up quickly, and other legal representation can be arranged if needed. He said the way his firm deals with local government conflict is primarily through a geographic strategy; that is, they represent many special districts, but they tend not to take on that work where it is geographically close to cities they represent.

2. He feels it is a big advantage for a lawyer to understand the other side. Much of what his profession does is to translate between opposing viewpoints. This a particular advantage when matters come to conflict to resolve the disputes through the courts or mediation.



- Councilor Woodard referred to the firm's fee structure and asked for examples for those times when work is performed by assistants within the firm. Mr. Ramis said project assistants (\$50/hour) are rarely used. The project assistant would be someone who would prepare complex PowerPoint presentations. The firm does not charge for secretarial services. His firm utilizes paralegal staff members who are selected from two main areas:



1. The paralegal who has experience in the industry they will serve.
2. Law school graduates.


- Councilor Woodard addressed his next questions to Mr. Hall. Councilor Woodard noted that Mr. Hall has been with the firm for a couple of years and has attended some city meetings (Planning Commission, in particular). He asked Mr. Hall to comment on his participation and insight. Mr. Hall said his experience is with the area of land use, which goes back prior to his law school education. His undergraduate degree is in urban planning and development for training as a planner followed by his law school education at Lewis & Clark Law School. Mr. Hall has been with the firm for more than four years, beginning as an intern his first year of law school. Mr. Hall provides advice and service to the Community Development Department. He meets with staff bi-monthly to review legal issues placed on an agenda by the City staff.  Mr. Hall advised he does not do a lot of work directly with the Planning Commission.

- Councilor Woodard and Mr. Jones briefly discussed Mr. Jones' prior military experience.

- Councilor Woodard and Mr. Bennett discussed his participation in the Building Owners Management Association. Mr. Bennett relayed information about his experiences, which have given him an understanding of industry pressures that his clients are under and how those are affected within a legal context. Currently, the trend is for sustainability and green leasing and Mr. Bennett described how he has been able to work sustainability concepts into leases.
- Councilor Henderson asked whom the City Attorney represents for the organization: staff, City of Tigard, citizens, or the industry. Mr. Ramis said his view is that the City Council is his client. The City Council sets the policy and the direction for the City. His job is to help the Council to carry out its policies and keep within the limits of the law. The second thing he does is to work with the City Manager who essentially has the same function as the City Attorney, which is to help the City Council achieve its goals and policies in an administrative capacity. The City Attorney assists the City Manager in his corresponding supporting role to the City Council. Under this role, the City Attorney works with Department Heads by helping to keep them within their statutory limits and to give them ideas about how to achieve their objectives. In response to a question from Councilor Henderson, Mr. Ramis said he does not represent the industry of government; rather, he needs to understand government as the client he represents.
- Mayor Dirksen referred to previous problem areas regarding services provided by the firm. The Mayor noted the firm responded by making some changes and he asked Mr. Ramis to comment. Mr. Ramis gave background on the merger of his firm with the Jordan Schrader firm, which made more resources available. He noted after the merger, he attempted to match the firm's organizational structure to the City's decentralized structure. This proved to be a mistake. In response, they changed to a centralized model and flattened their organizational chart. Now, when there is a land use issue, Mr. Hall will let Mr. Ramis know about it. If the issue is of any consequence, Mr. Ramis, as the senior land use person, addresses the matter. If there is a real estate issue of consequence, then Mr. Bennett is called in for his expertise. The feedback on this organizational change was that it is working for the City of Tigard.
- Council President Buehner noted that one of the issues she has observed over the years is that she has thought Mr. Ramis takes on too much and becomes over-committed. She asked how he has addressed this issue in recent years. Mr. Ramis said two things have helped him a great deal. First, his family insists on a time commitment from him. Second, by moving his practice to a larger organization, he has more assistance and he has learned how to take advantage of available resources.
- Council President Buehner noted that the City Council has infrequent contact with Mr. Jones and Mr. Bennett in the law firm and the City Council has not developed a rapport with them. She said she would like to see opportunities that are not "billing time" so the City Council can get to know the attorneys working on the litigation and

real estate issues. Mr. Ramis said he would be happy to discuss how to address this and agreed that a personal relationship is critical as they represent the City Council. He suggested it might be useful for Mr. Jones to give a litigation report periodically and do a similar report for real estate matters during the Study Session portion of City Council meetings. Mr. Bennett said he offers clients a “free legal day” periodically so members of the organization can spend the day meeting with him to talk about what is of concern and share future plans. This gives both sides an opportunity to become acquainted and understand one another.

- Council President Buehner said she thinks it is an advantage for the firm to represent private- and public-sector clients. Mr. Jones noted this is an advantage in the courtroom as judges appreciate attorneys who can look at the “big picture” and understand issues as perceived by both sides and are working in the “real world.”
- Mr. Bennett recounted how he has assisted one of his government clients to restructure real estate management practices to run more like a private business partner for efficient management of leases and allow them to capture funds so the operations are less of a drain on the General Fund.
-  Councilor Wilson asked for a response regarding insight with regard to the trend toward less litigation activity in recent months. Mr. Ramis said it is probably a combination of things and his experience is that litigation activity is cyclical. On balance, he said he would not like to contemplate what Tigard’s position might be if not for the disciplined practice of preventative law. Staff understands that extra time for preparation and training translates to fewer legal problems.
- Mr. Jones added to Mr. Ramis’ comments above that the firm’s philosophy is to be proactive by doing what is possible to make a lawsuit go away; i.e., writing an effective letter to the other party’s lawyer. The practice of many attorneys is to respond by filing an answer, which could lead to a protracted lawsuit.
-  Council President Buehner asked for the firm’s philosophy regarding mediation vs. traditional litigation. Mr. Ramis advised the firm recently recommended mediation in a major dispute for the City of Milwaukie. Mr. Jones said one should go to trial only after every conceivable, reasonable effort to resolve the matter has failed. It is in everyone’s best interest to resolve before going to trial.
- Councilor Woodard asked about the reference in the materials submitted to the “Martindale-Hubble” rating. Mr. Ramis said this is the best rating you can have and the attorneys present had all achieved this rating.

 Council meeting recessed.



Council meeting reconvened.

- **Interview Representatives of Beery Elsner Hammond**

- City Manager Prosser reviewed procedures and the criteria for selection of the successful candidate to provide City Attorney services for the City of Tigard.


Attorney Pam Beery introduced the presentation of the firm. Also, present from the firm were:

Nancy Werner, Attorney


David Doughman, Attorney

A summary of the presentation and interview by the Mayor and City Council follows:




- A PowerPoint presentation guiding the presentation by the Beery firm is included in the meeting packet materials.
- Ms. Beery gave history of the firm, which is also outlined in the presentation materials on file.
- Ms. Beery advised the firm is committed to representation of local government clients; they do not take on any private clients. The firm is comprised of eight attorneys and share the mission to provide cost-effective, conflict-free service to the cities, counties, and special districts they represent.
- Ms. Beery said their firm was well qualified to provide City Attorney services and realize that is a tough decision for a City Council to make a change. She said that they would be happy to answer any questions the Council members have so they feel comfortable with her firm and their proposal.
- Ms. Beery said their firm is the pre-eminent municipal law firm in Oregon. They are the only firm in the state to limit their practice to representing local government. For that reason, they are not only conflict-free, but are really good at what they do. During the presentation, Ms. Beery said they would explain the firm's capability to offer areas of special expertise, which are of interest and fundamental to city government.
- The firm has been in business for 13 years and is growing.
- Ms. Beery advised her specialty areas are land use and telecommunications. Ms. Werner also has expertise and offers support for telecommunications. The firm is involved at all levels; they work with staff at the application process and are accustomed to advising planning staff so that by the time a project is ready for a hearing before the Planning Commission or City Council, the firm is prepared. Legal issues have been addressed ahead of time and staff can feel confident that they have

answers for issues that might be raised during the hearing. They work so there are no surprises when a matter is at the hearing stage of the process. The firm collectively has years of experience handling appeals should they need to appear at the Land Use Board of Appeals. Ms. Beery said she has handled 35 LUBA cases and won all but three. She described experience of handling appeals by other members in the firm.  She expanded by giving examples of work they have done in high-profile land use matters.




- The firm provides land use training throughout the state to Planning Commission and City Council members.
- Ms. Beery is the past president and chair of the real estate and land use section of the Oregon State Bar. Firm member Christopher Crean serves on the Oregon State Bar Executive Committee.
- With regard to local budget law, Ms. Werner reported that their firm provides training to new Councilors and Budget Committee members to inform them of current Budget law and requirements.
- With regard to budget law issues, Ms. Werner said the firm offers advice on notice requirements, fund transfers, and supplemental budget procedures. The firm also advises in this area for urban renewal districts and special district bodies.
- The firm is offering a free seminar in February on local budget law. Mr. Doughman also commented on the training they are offering tailored especially to newly elected and appointed officials.
- With regard to codification services, Ms. Beery said they are comfortable with the components of ordinances, resolutions, and policy drafting. They are also amenable to an advising role if the City determines this is most cost effective. Typically, the firm offers review and advice when the staff is sophisticated. The firm has completed complete re-codification of City Codes and referred to the City of Hillsboro, which is considering a new Municipal Code for which the Beery firm has been assisting with for the past two years.
- Ms. Beery advised that she and Ms. Werner co-authored the model telecommunication ordinance for the League of Oregon Cities. Many cities in Oregon have adopted this ordinance. This ordinance has withstood legal challenges through the U.S. Supreme Court (Qwest).
- Ms. Beery commented on Reimbursement District ordinances, which are a method to partner for needed infrastructure. Their firm has successfully defended challenges to such ordinances through to the Court of Appeals for the cities of Woodburn and Fairview.

- Ms. Beery said they understand the role of City Recorder as opposed the law firm's role. She said they provide a support role advising that they are comfortable working with newly appointed City Recorders or those that have much experience and require City Attorney assistance on a periodic basis.
- With regard to election laws, Ms. Werner advised the firm has developed a number of election codes that utilizes the best from state law and also exercises cities' local authority in policy choices. The firm also works extensively on ballot initiatives and referendums including writing ballot titles and addressing ballot-title challenges. She referred to recent successes on the behalf of the City of Cornelius regarding interpretation of their gas tax requirements. The firm offers assistance to the City Recorder when initiative matters are filed.
- With regard to public contracting, Mr. Doughman advised that he and Mr. Elsner provide the expertise in this area. In 2003, members of the firm re-wrote the public contracting code for the State Legislature in an attempt to make it less confusing. This rewrite was implemented in 2005. They have helped many of their clients rewrite their public contracting procedures by doing this for them as a collective, which saved them money. The firm offers training on public contracting law; usually on a staff level.
- Mr. Doughman referred to the firm's recent assistance to help some of their clients on some federally funded projects to respond to requirements unique to each.
-  Mr. Doughman said they have found that cities and counties are increasingly more interested in the ability to have alternative contracting methods; i.e., qualifications-based review vs. who has submitted the lowest bid (requires an extra step before the Local Contract Review Board).
- With regard to annexation law, Ms. Beery referred to their RFP response. While there is a specific body of law that is applicable, there is a significant political overtone with regard to annexations. She referred to recent work related to the urban growth boundary with which their firm participated and the anticipation of increased instances of conflict of special districts who experience depleted funding when cities annex territory. This will become a significant area of law practice for cities within the Metro area in the coming decade. The firm has a great deal of depth/expertise with regard to annexations. She referenced issues with island areas of unincorporated land. The firm recently helped the City of Hillsboro annex 178 parcels, which was relatively "painless." The firm represents the Tualatin Hills Park & Recreation District, which has a voluntary annexation program requiring working through issues with the County and Metro.
- Ms. Beery explained her frequent reference to training. It is less expensive for the City when staff is able to (and wants to) do more. Through training, the staff will




come to work at a level where they do not need to call the City Attorney's office frequently. This is cost effective and fosters a highly rewarding team environment.






-  With regard to public financing, Ms. Beery referred to Tigard's recent increase in its water systems development charge and refund of bonds. The firm is comfortable with the matters and understand the role of bond counsel as opposed to their role. The firm has experience in urban renewal matters. Urban renewal is being considered more because of the state of the economy causing officials to look for creative ways for public/private financing of projects.
- With regard to public meetings and records law, Mr. Doughman said this is an area with which they work with Council and staff members. This is an area that does not provide much discretion as state law is uniformly applied to shine the light on government process as much as possible. In addition to offering training, they respond to routine questions regarding when Executive Sessions are permitted and the procedures to follow. He referred to the Attorney General's current proposal for new legislation to rewrite major portions of the public records and meetings laws. The firm is active with the League of Oregon Cities and has prepared comments to respond to elements of the proposed changes. Again, the firm believes staff training is key in this area.
- Ms. Beery noted the press is increasingly interested in the materials discussed in Executive Session and push the boundaries on what can be requested after the Session. The firm is comfortable with offering advice in this area and she noted the importance of managing situations that could result in significant political ramifications.
-  With regard to ethics, Ms. Werner said the firm offers extensive training because it is very important. The emphasis is in having officials know about the ethics requirements in advance so they can avoid problems or the violations of rules. People who participate in government who have had prior private sector experience might not necessarily understand rules regarding gifts. The newer rules might not be particularly considered intuitive as they are applied to one's spouse and family members. All of the attorneys in the firm work with ethics laws and they have dealt with a variety of questions. The firm is often consulted on conflict of interest situations as officials seek to determine whether they can participate in the decision-making process. Ms. Beery advises the firm welcomes calls from City Council members prior to meetings to help them address how they should handle potential conflicts of interest.
-  Ms. Beery referred to the materials distributed to the City Council this evening responding to the Mayor's request for information regarding conflicts, the measurement of cost-effective services, and providing writing samples.

Council questions followed and the discussions are summarized below:

- Councilor Henderson asked for an example of how working with two cities has benefited both cities. Ms. Beery said their firm has a strong regional presence. For example, in the urbanization forum, even when there were subcommittees meeting behind closed doors, she was asked to attend and several clients shared the cost (Beaverton, Hillsboro, Tualatin Hills Park & Recreation District and the Fire District.) There was recognition of the firm's expertise and they worked to find some common ground as issues were evaluated. Ms. Beery cited another example. When Measure 37 passed, this created a series of claims, rules, and court cases. Mr. Doughman and Mr. Elsner were instrumental in putting together a daylong, free seminar for their clients to help them develop a strategy. They also prepared claim forms and documentation. Ms. Werner reported how the firm is able to help cities to work on franchise agreements because they are working with the same parties; costs can be shared resulting in time and money savings. Ms. Beery said the public contracting update is another example. When the law changed, everyone was required to do a wholesale rewrite of their local rules. The firm created a master set of rules that complied with the statutes. Each city was able to take its unique modification and interests and include them in the rewrite without needing to devise language for the whole thing.
-  Councilor Wilson asked Ms. Beery how decisions are made with regard to which attorney would attend a particular city's City Council meeting. Ms. Beery explained that the City of Tigard's City Council meetings are on the opposite Tuesday of many of their clients. To determine which attorney will attend, they look at each client's preference. Sometimes, it is based on what is before the City Council for a particular agenda; that is, if the major item is one with which a certain attorney has familiarity, then that is the attorney who will attend. If the City Council determines they have a preference for a certain lawyer for continuity, but an item requires the attendance of another member of their firm, there would be two attorneys present for part of the meeting, but the City would not be charged for the second attorney's time.
-  Councilor Woodard noted that from his review of the materials submitted from the firm that a couple of the attorneys had previously worked with the Ramis law firm. He asked Ms. Werner what the most challenging telecommunication right-of-way issue was for her. Ms. Werner cited her work regarding the statewide audit of Verizon and Qwest telecommunication franchise fees. A second project involved a matter with Verizon/Fios at the time they did extensive work putting in their fiber optic network.
-  Ms. Beery addressed Councilor Woodard's notation that she and Paul Elsner had previously worked with the Ramis firm. She relayed the history of their affiliation with the Ramis firm in the Municipal Law Department. In the late 1990's

she prepared the first statewide model telecommunications ordinance, which was adopted in 2000 by League of Oregon Cities, and recently updated by their firm. This ordinance is the standard for Oregon cities with regard to regulating telecommunication facilities. She advised that other attorneys in the Ramis law firm were representing a telecommunications company in a lawsuit against a city. Disagreement ensued regarding the firm's representation for these two opposing areas. She sought advice from another attorney who counseled, in his opinion, that this represented a conflict. Prior to this, Mr. Elsner had been formulating an idea of creating a law firm that would only represent cities. After this departure in professional viewpoint with other members of the Ramis firm, Mr. Elsner and Ms. Beery decided to pursue the idea and created this one-of-a kind law practice where only public agencies would become their clients.

-  Councilor Woodard referred to public/private partnerships experience of the firm. Ms. Beery shared their work for the public art program in Hillsboro, which fosters the creation of art through City seed funds or grants. Then, city-sponsored contests or public selections are hosted with the result that the city ends up with an artist who will volunteer a piece of work for display for the City. The City might lease, buy, or display the piece for a period. Ms. Beery referred to a Sherwood public/private project they are also working on. She noted how the public contracting rules must be applied and the types of agreements that must be crafted for these types of partnerships. Mr. Doughman advised that Tualatin Park & Recreation District is partnering with the Timbers and their firm has worked on the legal aspects to make this happen. Public/private partnerships are becoming more popular – in urban renewal areas, this represents an opportunity to leverage urban renewal dollars.
-  In response to a question from Councilor Woodard, Ms. Werner referred to the writing sample they provided regarding support for recreational immunity for the City. The work applies to open spaces available to the public for recreational purposes (includes City parks) for no charge.
-  Mayor Dirksen noted that one of the responsibilities for a city attorney is to help the City avoid litigation. He asked if avoiding litigation was the primary goal. Ms. Beery referred to their response in the RFP. There are times when it is appropriate to intervene in a matter to benefit all cities; i.e., the telecommunications legal victory that ended up benefiting every city. In other instances, after careful evaluation, it is determined that litigation is the way to go. Ms. Beery said the governing body needs to make the choice and her job is to advise of the risks and benefits of a particular approach. Most of the time, it does not make sense to litigate as there are options available to resolve a matter short of litigation. Litigation is expensive and often has a negative public perception. Ms. Werner said there is a middle ground where thought is given about how to minimize the risk for their client so they can proceed in the direction they want.

-  Council President Buehner asked how much of the firm's practice is associated with doing appellate work for cities that they generally are not representing. Ms. Beery said recently they have done more of this type of work. Most of this work is from referrals where the situation has evolved to litigation and the firm is asked to step in to help. This type of work represents about 15-20 percent of their workload. Ms. Beery agreed with Council President Buehner that this is time-intensive work. In addition, there are deadlines that must be met. The firm has eight people working on the government work all of the time and they work cohesively to ensure all the work taken on by the firm is accomplished.
-  Council President Buehner advises she works as a mediator part-time. She asked the firm's philosophy with regard to mediation. Mr. Doughman said it depends on the issue. For public contracting, mediation is often included as a provision within contracts. Ms. Beery said as a general rule, they support the concept of mediation.
-  Council President Buehner asked what the firm's experience has been in dealing with arbitration. Ms. Beery said that in the construction context, it has been their experience that government bodies do not do well. This is partly because it is intensive in terms of recordkeeping; so many local governments are not used to the detailed records that are needed to succeed before an arbitrator. The results are mixed, from Ms. Beery's perspective, on binding arbitration. The outcome is a little different in the labor context. There was discussion on how some attorneys are using the process for arbitration as a discovery vehicle with no intention of trying to resolve a matter.
-  Council President Buehner asked for detail on pricing. Ms. Beery said the firm understands the need for cities to manage costs. They utilize paralegal services or less-experienced lawyers for specific types of work. The firm members believe they can produce work at a cost-effective overall cost. To compare, one must consider the value received for the rates charged. The firm works closely with city managers when there are projects to be done outside the contract to limit and track costs. Travel time is negotiable. Typically, the firm has a flat or reduced rate depending on what the client prefers.
-  Council President Buehner said that often the specialists (litigators, appellate attorneys, public contract attorneys) do not often visit with the city officials. When they must interact with the officials, these specialists do not have a well-developed relationship and this can create a level of discomfort for City Council members. Ms. Beery commented on the firm's team approach and that the City Council will know the attorneys working on matters for them. It is important for City Council members to know and trust their city attorneys. After a request for further clarification from Council President Buehner, Ms. Beery referred to their practice that if there is a person working on a special project, then he or she will appear

before the City Council at the beginning in a workshop setting so the City Council members become acquainted with that person doing the work from the firm. When the matter comes before the City Council, this person attends the meeting along with the primary attorney. There are times when other lawyers might be needed and brought in; i.e., labor, bond counsel etc.

Mayor Dirksen thanked the firm members for their presentation.

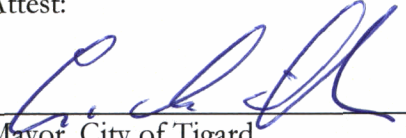
The Council adjourned the business meeting and went into an Executive Session. City Manager Prosser read the following:

EXECUTIVE SESSION: The Tigard City Council will go into Executive Session to discuss employment of public officers, employees, and agents under ORS 192.660(2)(a). All discussions are confidential and those present may disclose nothing from the Session. Representatives of the news media are allowed to attend Executive Sessions, as provided by ORS 192.660(4), but must not disclose any information discussed. No Executive Session may be held for the purpose of taking any final action or making any final decision. Executive Sessions are closed to the public

Executive Session adjourned at 9:30 p.m.


Catherine Wheatley, City Recorder

Attest:



Mayor, City of Tigard

Date: 3.22.2011